

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 91-018-15-1-5-01043-16  
**Petitioner:** Walter E. Owens  
**Respondent:** White County Assessor  
**Parcel:** 91-76-25-000-013.700-018  
**Assessment Year:** 2015

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated his 2015 assessment appeal with the White County Assessor on September 18, 2015.
2. On March 31, 2016, the White County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioner.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board. He elected the Board's small claims procedures.
4. The Board issued a notice of hearing on December 2, 2016.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on January 5, 2017. She did not inspect the property.
6. Walter E. Owens appeared *pro se*. Scott Potts appeared for the Respondent. Both of them were sworn and testified.

**Facts**

7. The property under appeal is an "empty lot with a junk shed" located at 205 West Anderson Street in Wolcott.
8. The PTABOA determined a total assessment of \$6,700 (land \$6,600 and improvements \$100).
9. The Petitioner requested a total assessment of \$4,200 (land \$4,100 and improvements \$100).

## Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Property record card for 200 West South Street,  
Petitioner Exhibit 2: Property record card for 204 West Anderson Street.

Respondent Exhibit 1: 2011 subject property record card,  
Respondent Exhibit 2: 2012 subject property record card,  
Respondent Exhibit 3: Property record card for Race Street, parcel number 91-84-21-000-040.000-014,  
Respondent Exhibit 4: Property record card for 221 South Railroad Street.

Board Exhibit A: Form 131 with attachments,  
Board Exhibit B: Notice of hearing dated December 2, 2016,  
Board Exhibit C: Hearing sign-in sheet,  
Board Exhibit D: Notice of Appearance and Application for Certification as a Professional Appraiser with the Department of Local Government Finance (DLGF) for Scott Potts.

- d) These Findings and Conclusions.

## Contentions

11. Summary of the Petitioner's case:

- a) The property's assessment is too high. The property is a vacant residential lot with an "old utility shed." In 2015, the total assessment increased from \$4,500 to \$6,700. *Owens argument.*
- b) There is little market demand in Wolcott. Consequently, sale prices have not gone up. Because land values are not increasing, the trending factor should be on a downward trajectory. *Owens testimony.*
- c) In an effort to prove the property was over-assessed, the Petitioner selected two properties from Wolcott that sold in 2014. The first property, a vacant corner lot located at 200 West South Street, sold for \$4,500 after being on the market for over a year. This lot has water and sewage "hookups." Water and sewage "tap in" costs roughly \$2,500. Mr. Potts failed to take this into account with his purportedly comparable properties. *Owens testimony; Pet'r Ex. 1.*

- d) The second property, located at 204 West Anderson in Wolcott, sold for \$3,210. This property also has sewer and water “hookups.” In addition, this property also includes a small, older garage. *Owens testimony; Pet’r Ex. 2.*
- e) A neighboring vacant parcel that once “included an old house sold for like \$6,000.” This parcel includes “about three lots.” The previous owner, who was a realtor, stated she “might be able to get \$7,500 for it.” *Owens testimony.*
- f) The Respondent presented purportedly comparable properties that are not comparable to the subject property. The Respondent presented properties from different areas and “there is a big difference between values in Monticello, Wolcott, and Monon.” *Owens argument (referencing Resp’t Ex. 3, 4).*

12. Summary of the Respondent’s case:

- a) The property is correctly assessed. The 2015 assessment increased because a negative influence factor was removed. *Potts argument.*
- b) Prior to the 2012 reassessment, the Respondent applied negative influence factors to vacant lots lacking water and sewage availability. This in turn lowered the assessments of the vacant lots. When land was reassessed in 2012, the Respondent began treating all land as vacant and undeveloped until a structure was built on the lot. This resulted in the removal of negative influence factors. *Potts testimony.*
- c) For the subject property the removal of the negative influence factor “was just forgotten, and that happened on several properties throughout the county.” The subject property’s base rate was lowered from \$150 per front foot to \$110 per front foot in 2012, but the negative influence factor was not removed until 2015. *Potts testimony; Resp’t Ex. 1, 2.*
- d) In effort to support the current assessment, Mr. Potts offered two recent sales. The first sale, located on Race Street in a “weak-sale part of town” in Monon, sold for \$3,500 on October 13, 2015. Admittedly, properties in Monon are not as valuable as properties in Wolcott. Monon has a market factor of 0.75 while Wolcott has a market factor of 0.95. After a location adjustment was applied, the Monon property should be valued at \$4,433. *Potts argument; Resp’t Ex. 3.*
- e) The second sale was a property located at 221 South Railroad Street in Monticello. This property sold on June 13, 2014, for \$10,000. Although the market is “generally better in Monticello” the area of town where this property is located is “pretty similar to Wolcott.” Because this lot is smaller than the subject property, an adjustment for depth and frontage was appropriate. Mr. Potts also made an adjustment for location. This property’s adjusted sales price is \$11,828. *Potts testimony; Resp’t Ex. 4.*
- f) Because vacant residential lot sales in a small town are difficult to find, it is “tough to draw a conclusion on a single property’s value.” In this case, the two sales presented

indicate a lot of variability. Accordingly, these sales represent “the upper and lower limit of the subject property’s value.” *Potts argument; Resp’t Ex. 3, 4.*

### **Burden of Proof**

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2014 to 2015. In fact the total assessment increased from \$4,500 in 2014 to \$6,700 in 2015. According to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2015 assessment is correct. To the extent the Petitioner requests an assessment below the 2014 level of \$4,500; he has the burden to prove that lower value.

### **Analysis**

17. The Respondent failed to make a prima facie case that the 2015 assessment was correct.
  - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs,

sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

- b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
- c) The Respondent had the burden to prove the 2015 assessment was correct. First, the Respondent argues the removal of a negative influence factor triggered the increase. Mr. Potts stated the negative influence factor “should have” been removed in 2012, but the Respondent “missed it” and subsequently it was removed in 2015. Accordingly, the removal of the influence factor was “responsible” for the entire increase from 2014 to 2015.
- d) The Respondent’s burden, however, is not merely to explain why the assessment increased. Instead, the Respondent must offer probative evidence proving the subject property’s market value-in-use. *See* Ind. Code § 6-1.1-15-17.2.
- e) Mr. Potts did offer some market based evidence by introducing sales of two purportedly comparable properties. In presenting these sales, the Board can infer Mr. Potts is attempting to rely on the sales-comparison approach to establish the market value-in-use of the property.
- f) For sales data to be probative, the properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is “similar” or “comparable” to another property do not show comparability. *See Long*, 821 N.E.2d 466, 470. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect the properties’ relative market values-in-use. *Id.* at 471.
- g) Here, the Respondent’s analysis fails to indicate the subject property’s market value-in-use. First, Mr. Potts failed to conclusively prove his purportedly comparable properties are in fact comparable to the subject property. Next, while Mr. Potts made adjustments to account for differences in location and size, he failed to reconcile the adjusted values. Instead, he offered a range from \$4,433 to \$11,828. This Evidence fails to prove the subject property’s market value-in-use.
- h) For these reasons the Respondent did not offer enough probative evidence to prove the 2015 assessment was correct. Therefore the Petitioner is entitled to have his assessment returned to its 2014 level of \$4,500. The Petitioner, though, sought an even lower assessment. The Board now turns to the Petitioner’s argument.

- i) The Petitioner argued there is little demand for vacant lots in Wolcott, and that property values in Wolcott are lower than in Monon and Monticello. Further, he claimed that the cost to add water and sewage should be considered when comparing properties. While these claims may be valid, they do not help to prove the subject property's market value-in-use.
- j) The Petitioner did offer some market-based evidence. Specifically, he presented two sales located in Wolcott. In doing so, the Board can assume the Petitioner intended to use the sales-comparison approach. As discussed above, however, merely offering sale prices is not enough. The Petitioner failed to show the similarities or differences between the purportedly comparable properties and the subject property. Further, he failed to make any adjustments to account for differences between the properties. For these reasons the Petitioner failed to make a case that the assessment should be reduced below the 2014 level of \$4,500.

### **Conclusion**

18. The Respondent had the burden of proving the 2015 assessment was correct. For the reasons stated above, the Respondent failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioner sought an assessment lower than the 2014 level but likewise failed to make a prima facie case. Thus, the Board orders the subject property's 2015 assessment be reduced to the 2014 amount of \$4,500.

### **Final Determination**

In accordance with these findings of fact and conclusions of law, the 2015 assessment must be changed to \$4,500.

ISSUED: April 5, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.